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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**DIANE PATRICIA BABCOCK
aka DIANE WRIGHT
440 Sky Oaks Drive
Angwin, CA 94508**

Registered Nurse License No. 162111

RESPONDENT

Case No. 2013-257

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 10, 2012, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2013-257 against Diane Patricia Babcock, aka Diane Wright (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about April 1, 1965, the Board of Registered Nursing (Board) issued Registered Nurse License No. 162111 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and expired on March 31, 2011 and has not been renewed.

3. On or about October 10, 2012, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2013-257, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record which, pursuant to Business and Professions Code section 136 and/Title 16, California Code of Regulation, section 1409.1, is required to be reported and maintained with the Board, which was and is:

440 Sky Oaks Drive

Angwin, CA 94508.

1 4. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
3 124.

4 5. On or about October 26, 2012, the signed Certified Mail Receipt was returned to our
5 office indicating a delivery date of October 15, 2012.

6 6. Business and Professions Code section 2764 states:

7 The lapsing or suspension of a license by operation of law or by order or decision of
8 the board or a court of law, or the voluntary surrender of a license by a licentiate shall not deprive
9 the board of jurisdiction to proceed with an investigation of or action or disciplinary proceeding
10 against such license, or to render a decision suspending or revoking such license.

11 7. Government Code section 11506 states, in pertinent part:

12 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
13 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
14 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
15 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

16 8. Respondent failed to file a Notice of Defense within 15 days after service of
17 the Accusation upon her, and therefore waived her right to a hearing on the merits of Accusation
18 No. 2013-257.

19 9. California Government Code section 11520 states, in pertinent part:

20 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
21 agency may take action based upon the respondent's express admissions or upon other evidence
22 and affidavits may be used as evidence without any notice to respondent.

23 10. Pursuant to its authority under Government Code section 11520, the Board after
24 having reviewed the proof of service dated October 10, 2012, signed by Kami Pratab, finds
25 Respondent is in default. The Board will take action without further hearing and, based on
26 Accusation No. 2013-257 and the documents contained in Default Decision Investigatory
27 Evidence Packet in this matter which includes:

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- 1 Exhibit 1: Pleadings offered for jurisdictional purposes; Accusation No. 2013-257,
2 Statement to Respondent, Notice of Defense (two blank copies), Request
3 for Discovery and Discovery Statutes (Government Code sections
4 11507.5, 11507.6 and 11507.7), proof of service; and if applicable, mail
5 receipt or copy of returned mail envelopes;
- 6 Exhibit 2: License History Certification for Diane Patricia Babcock, aka Diane
7 Wright, Registered Nurse License No. 162111;
- 8 Exhibit 3: Affidavits of Steve Nichols and Patricia DeMellopine;
- 9 Exhibit 4: Certification of costs by Board for investigation and enforcement in Case
10 No. 2013-257;
- 11 Exhibit 5: Declaration of costs by Office of the Attorney General for prosecution of
12 Case No. 2013-257.

13 The Board finds that the charges and allegations in Accusation No. 2013-257 are separately and
14 severally true and correct by clear and convincing evidence.

15 11. Taking official notice of Certification of Board Costs and the Declaration of Costs by
16 the Office of the Attorney General contained in the Default Decision Investigatory Evidence
17 Packet, pursuant to the Business and Professions Code section 125.3, it is hereby determined that
18 the reasonable costs for Investigation and Enforcement in connection with the Accusation are
19 \$4771.00 as of November 26, 2012.

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DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Diane Patricia Babcock, aka
3 Diane Wright has subjected her following license(s) to discipline:

4 a. Registered Nurse License No. 162111

5 2. The agency has jurisdiction to adjudicate this case by default.

6 3. The Board of Registered Nursing is authorized to revoke Respondent's license(s)
7 based upon the following violations alleged in the Accusation, which are supported by the
8 evidence contained in the Default Decision Investigatory Evidence Packet in this case.

9 a. Violation of Business and Professions Code section 2761(a)(1) -
10 Unprofessional Conduct, Gross Negligence.

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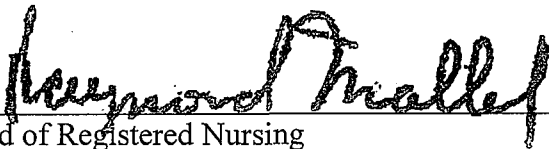
ORDER

IT IS SO ORDERED that Registered Nurse License No. 162111, heretofore issued to Respondent Diane Patricia Babcock, aka Diane Wright, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MARCH 29, 2013.

It is so ORDERED FEBRUARY 27, 2013.



Board of Registered Nursing
Department of Consumer Affairs
State of California

Attachment:

Exhibit A: Accusation No. 2013-257

Exhibit A

Accusation No. 2013-257

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
JONATHAN D. COOPER
3 Deputy Attorney General
State Bar No. 141461
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 703-1404
Fax: (415) 703-5480
6 *Attorneys for Complainant*

7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2013-257**

12 **DIANE PATRICIA BABCOCK**
13 **aka Diane Wright**
440 Sky Oaks Drive
Angwin, CA 94508

A C C U S A T I O N

14 **Registered Nurse License No. 162111**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs.

21 2. On or about April 1, 1965, the Board of Registered Nursing issued Registered Nurse
22 License Number 162111 to Diane Patricia Babcock, aka Diane Wright (Respondent). The
23 Registered Nurse License was in full force and effect at all times relevant to the charges brought
24 herein and expired on March 31, 2011.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 4. Section **2750** of the Business and Professions Code (Code) provides, in pertinent part,
2 that the Board may discipline any licensee, including a licensee holding a temporary or an
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section **2764** of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license.

8 **STATUTORY AND REGULATORY PROVISIONS**

9 6. Section **2761** of the Code states, in pertinent part:

10 The board may take disciplinary action against a certified or licensed nurse or deny an
11 application for a certificate or license for any of the following:

12 (a) Unprofessional conduct, which includes, but is not limited to, the following:

13 (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
14 functions.

15 ...

16 7. California Code of Regulations, title 16, section **1442**, states:

17 As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
18 the standard of care which, under similar circumstances, would have ordinarily been exercised by
19 a competent registered nurse. Such an extreme departure means the repeated failure to provide
20 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
21 situation which the nurse knew, or should have known, could have jeopardized the client's health
22 or life.

23 8. California Code of Regulations, title 16, section **1443**, states:

24 As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the
25 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
26 exercised by a competent registered nurse as described in Section 1443.5.

27 9. California Code of Regulations, title 16, section **1443.5** states:

28 A registered nurse shall be considered to be competent when he/she consistently

demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 **FACTUAL SUMMARY**

2 11. Respondent was employed as a registered nurse at Napa State Hospital (hereinafter
3 "NSH") from March, 1999, until January, 2007. From on or about March, 1999, until 2005,
4 Respondent was responsible for providing nursing care to Patient A¹ and to other patients at NSH.

5 12. Beginning while Respondent was employed at NSH, and continuing until on or about
6 2009, Respondent Patient A gave Respondent cash on a recurring basis, adding up to a total of
7 approximately \$8,000.00. Respondent deposited the money into a bank account and/or CD
8 account. Respondent and Patient A kept their arrangement secret.

9 13. The above-described conduct violated the rules applicable to NSH employees. This
10 conduct also enabled Patient A to misrepresent her financial status to NSH, to Conrep² and to
11 Social Security personnel, and to potential creditors.

12 **FIRST CAUSE FOR DISCIPLINE**

13 (Gross Negligence/Incompetence)

14 14. Respondent is subject to disciplinary action under section 2761(a) of the Code in that
15 she acted with gross negligence and/or incompetence, as set forth above in paragraphs 11-13.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (Unprofessional Conduct)

18 15. Respondent is subject to disciplinary action under section 2761(a) of the Code in that
19 she acted unprofessionally, as set forth above in paragraphs 11-13.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board of Registered Nursing issue a decision:

23 1. Revoking or suspending Registered Nurse License Number 162111, issued to Diane
24 Patricia Babcock, aka Diane Wright;

25 2. Ordering Respondent to pay the Board of Registered Nursing the reasonable costs of
26

27 ¹ The identity of Patient A is withheld to protect patient privacy.

28 ² Conrep is the Conditional Release Program, applicable to NSH residents who are placed
on outpatient status.

1 the investigation and enforcement of this case, pursuant to Business and Professions Code section
2 125.3;

3 3. Taking such other and further action as deemed necessary and proper.

4 DATED: October 10, 2012 Stacie Benz
5 *for* LOUISE R. BAILEY, M.ED., RN
6 Executive Officer
7 Board of Registered Nursing
8 Department of Consumer Affairs
9 State of California
10 Complainant
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